



ALTS

Association for Local Telecommunications Services

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FEDERAL COMMUNICATIONS COMMISSION
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EMILY M. WILLIAMS
ATTORNEY

November 14, 1997

Magalie Roman Salas
Secretary—
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

In re: Application of BellSouth Corporation et al for
Provision of In-Region, Inter-LATA Services in South
Carolina, CC Docket No. 97-208

Dear Secretary Salas,

Enclosed for filing please find six copies of the public (redacted) version of the Reply Comments of the Association for Local Telecommunications Services ("ALTS") and six copies of a confidential version of the ALTS comments. The confidential copies of the comments contain two Confidential Exhibits to an affidavit filed by Mr. Steven D. Moses. Each of the copies containing the Confidential Exhibit have been identified at the top of the first page of the Reply Comments and on each page of the confidential exhibits with the legend "Confidential - Subject to Protective Order". The Confidential Exhibit has also been segregated from the remainder of the Reply Comments by a green colored sheet of paper.

Any person seeking disclosure of the Confidential Attachments should address such a request to:

Nanette Edwards, Esq.
700 Boulevard South, Suite 101
Huntsville, Alabama 35802

205 650-3802

Should you have any other questions concerning the ALTS' Reply Comments, please contact me at 202 969-2585. Thank you for your time and consideration.

Sincerely

Emily M. Williams
Emily M. Williams

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Application by BellSouth Corp.,)
BellSouth Telecommunications, Inc.,)
and BellSouth Long Distance, Inc. for)
Provision of In-Region, InterLATA)
Services in South Carolina)

CC Docket No. 97-208

**REPLY COMMENTS OF THE ASSOCIATION FOR
LOCAL TELECOMMUNICATIONS SERVICES**

Pursuant to the Public Notice issued September 30, 1997 (DA 97-2112), the Association for Local Telecommunications Services ("ALTS") hereby files its Reply Comments in the above proceeding.

SUMMARY

The Department of Justice's opposition to BellSouth's application for § 271 authority in South Carolina provides a sobering account of the damage that would be inflicted upon local competition if the RBOCs were permitted to deviate from the Section 271 "roadmap" provided in the Commission's Ameritech-Michigan Order.¹ Joining other states in the BellSouth Region that have rejected BellSouth's requests for interLATA authority (as well as the South Carolina Consumer Advocate), DOJ's opposition details the many ways in which BellSouth has attempted

¹ Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137 (FCC 97-298, order released August 19, 1997).

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to depart from the Ameritech-Michigan Order:

- DOJ shares the concern of several states that BellSouth has failed to show its OSS systems provide: "adequate, nondiscriminatory access ... that will be critical to competitors' ability to obtain and use unbundled elements and resold services" pursuant to the Ameritech-Michigan Order (id. at 4).
- DOJ agrees with several states in the BellSouth region that BellSouth has failed to show: "it offers cost-based prices for unbundled network elements that permit entry and effective competition by efficient competitors" (id.).
- DOJ agrees that BellSouth has failed to provide: "indicators of wholesale performance" as required by the Ameritech-Michigan Order.
- The absence of competitive entry at the present time in South Carolina means the Department lacks "best evidence" as to whether the entry paths envisioned by the 1996 Act: "are fully and irreversibly open to competitive entry to serve both business and residential customers" (DOJ Evaluation at 2-3). While the Department would still consider an application in the absence of competition where an RBOC: "proves that significant barriers are not impeding the growth of competition," providing such evidence is something BellSouth "has failed to do" (id. at 3).

DOJ is particularly eloquent about the consequences of permitting any RBOCs to lurch off the path laid out in the Ameritech-Michigan Order. In discussing how the absence of any commercial use of BellSouth's OSS deprives the Department of "best evidence," and thus requires careful current examination of any alleged deficiencies, DOJ pointedly explains why these issues must be resolved prior to an RBOC's interLATA entry (Evaluation at 28):

"It is precisely because these complex issues are so difficult to evaluate, and because of their substantial competitive impact, that the Commission should insist that potentially significant OSS problems be resolved before the BOCs enter the interLATA market. Regulatory solutions in this area will be exceedingly difficult if the BOCs themselves have no incentive to resolve these problems." (Emphasis in original.)

DOJ's reasoning applies with equal force to the overriding importance of having all RBOCs adhere to the principles of the Ameritech-Michigan Order. Ameritech's CEO has praised the roadmap,² and its Executive Vice President has testified that Ameritech will: "dot the 'i's and cross the 't's" in its next long distance application³ (statements underscored by Ameritech's decision not to appeal or petition for reconsideration of the Ameritech-Michigan Order).

If the new Commission disregards DOJ's sound advice, and permits the RBOCs to relitigate issues that were settled in the Ameritech-Michigan Order -- matters that have been accepted both by Ameritech, however grudgingly, and by the CLEC community, which does not share the Order's interpretation of Track A --

² Mr. Richard Notebaert, CEO of Ameritech, stated at his August 19, 1997, news conference that: "This decision is a big step forward ... Before today, the absence of a realistic roadmap was one of the two main reasons that the Telecom Act has not lived up to its promise. Now, to have a map virtually in hand puts Ameritech a step ahead in making competition work." Although Mr. Notebaert subsequently criticized the roadmap in late October (See Communications Daily, Oct. 29, 1997) Ameritech has not appealed or petitioned for reconsideration of the Order.

³ Prepared Statement of Mr. Barry E. Allen, Executive Vice President - Ameritech, September 17, 1997.

then every RBOC will toss the roadmap in the wastebasket, and start demanding their own custom-tailored approaches.

The new Commission should spare itself the pointless consumption of legal resources such relitigation would entail -- and also avoid the other heavy-handed tactics the RBOCs would adopt if they sensed any opportunity for re-opening settled matters. The Commission got the roadmap right in its Ameritech-Michigan Order, and the only sensible approach now is to start the RBOCs marching down the road.

I. THE COMMISSION SHOULD RELY UPON THE EVIDENCE AND CONCLUSIONS OF OTHER STATE PUCs, THE SOUTH CAROLINA CONSUMER ADVOCATE, AND THE DEPARTMENT OF JUSTICE CONCERNING BELLSOUTH'S NON-COMPLIANCE WITH THE REQUIREMENTS OF § 271.

The Department of Justice, other State Commissions and their staffs, and the South Carolina Consumer Advocate, have examined BellSouth's Statements of Generally Available Terms and Conditions or its general compliance with the requirements of Section 271. They have concluded that BellSouth has not complied with the standards and requirements of Sections 251 and 271. Because the processes used throughout the BellSouth region are very similar, the Commission may not just accept the findings of the South Carolina Commission and should instead look at the weight of authority concluding that BellSouth has not yet satisfied the requirements of the Act. These determinations focus on two extremely significant areas in which BellSouth is

not in compliance.

First, every state that has looked at the issue (except South Carolina and Louisiana) has found that BellSouth does not currently provide the adequate, nondiscriminatory access to its Operational Support Systems ("OSS") necessary to allow competitors to obtain nondiscriminatory access to unbundled network elements ("UNEs") or resold services. Second, a number of states have found that BellSouth has failed to show that the rates it proposes for various elements and services are cost-based as required by Section 252 of the Act. While ALTS agrees with these commissions that there are additional areas in which BellSouth compliance has not been demonstrated, these two areas are so significant that they individually require Section 271 dismissal.

The Alabama Public Service Commission - The Alabama Public Service Commission, in an order released just three weeks ago after formal hearings, held it was unable to find that the SGAT filed in that state satisfied the requirements of either Section 251 or 271. The Commission concluded that "BellSouth's OSS interfaces must be further revised to provide nondiscriminatory access to BellSouth's OSS systems as required by § 251(c)(3)".⁴

⁴ In re Petition for Approval of a Statement of Generally Available Terms and Conditions, Docket 25835, p. 7 (Alabama Public Utilities Commission, released October 16, 1997)

The Commission concluded that it was necessary to institute a further proceeding before approving any OSS systems.⁵ The Alabama Commission also found that BellSouth's proposed rates had not been demonstrated to be cost-based.

The Georgia Public Service Commission - Even more recently the Georgia Public Service Commission found that BellSouth has not satisfied the requirements of Sections 251 and 271 with respect to the availability of operational support systems (Order released October 29, 1997).⁶ While the Georgia Commission did allow the SGAT to go into effect so that CLECs could obtain elements and services pursuant to the SGAT if they so desired, the Commission specifically stated that its determination was limited to whether the SGAT should be allowed to go into effect and did not address issues relating to Section 271 compliance. Because the Georgia Commission had recently completed its costing docket it allowed the SGAT to become effective pursuant to the Commission's requirements in the costing docket. Nonetheless, it also noted a number of issues that still were open, including the collocation pricing arrangements.

⁵ BellSouth did not object to further proceedings on OSS issues in Alabama. Id. at 8.

⁶ In re BellSouth Telecommunications, Inc.'s Revised Statement of Generally Available Terms and Conditions Under Section 252(f) of the Telecommunications Act of 1996, at 1 (Georgia PSC, October 29, 1997).

The Florida Public Service Commission - The Florida Public Service Commission staff recently recommended that the full Commission find that: "BellSouth has not demonstrated that it has provided access to Operations Support Systems functions in essentially the same time and manner as it does for itself."⁷ The Staff also found that for a number of UNEs BellSouth had failed to supply cost studies, and relied solely upon negotiated agreements. Accordingly, staff could not conclude that the rates were cost-based as required by Section 251. On November 4, 1997, the full Commission also concluded that BellSouth's request should be rejected, and will shortly issue its written decision.

The Consumer Advocate for the State of South Carolina ("CASSC") - The CASSC filed comments in this proceeding that are consistent with the findings of the state commissions discussed above. The CASSC notes that there has been no determination that the BellSouth's rates are cost-based and that in fact the South Carolina Commission is not even scheduled to finish its cost docket until mid-December.⁸ Perhaps more importantly,

⁷ In re Consideration of BellSouth Telecommunications Inc.'s Entry into InterLATA Services pursuant to Section 271 of the Federal Telecommunications Act of 1996, Docket No. 960786.

⁸ While the argument continues to be made by BellSouth that if its rates are found not to be cost based, any problems can be rectified by "true-up" provisions. But, it bears repeating, that CLECs have extreme difficulty planning and raising capitol under such circumstances and a true-up will not make a CLEC whole for customers lost during the period of non-cost-based rates.

considering the statutory purpose of the Consumer Advocate, is its conclusion that "BellSouth's entry into the interLATA market is not in the public interest at this time." (Consumer Advocate Comments at 7 (emphasis added).)

The Department of Justice - Finally, as noted above, the Comments of the United States Department of Justice are in accord with the state Commissions noted above and the Consumer Advocate for North Carolina. In particular, the Department of Justice found with respect to operational support systems that the BellSouth application falls: "well short of satisfying the standards articulated by the FCC" in the Ameritech-Michigan Order (DOJ Evaluation at 27). In addition, the Department concluded that BellSouth has not "demonstrated that its current prices are, and future prices will be, supported by a reasoned application of an appropriate methodology." Id. at 34.

* * *

The Commission should not, and cannot, disregard the findings and opinions of these bodies. While the state commission in South Carolina came to different conclusions on these major issues, the Commission should weigh them in the light of the majority of state forums that have commented on BellSouth's compliance efforts -- SGATs and interconnection processes that are largely uniform across BellSouth's region.

II. TRACK B REMAINS DISABLED FOR AN RBOC SO LONG AS:
(1) A CLEC HAS INDICATED ITS DESIRE TO PROVIDE
FACILITIES-BASED RESIDENTIAL AND BUSINESS SERVICE; AND
(2) THE CLEC HAS TAKEN REASONABLE STEPS TOWARD THAT GOAL.

There is no dispute there is only the most meager competition in South Carolina's local markets today. No carrier has alleged, nor does ALTS contend, that facilities-based competition exists in South Carolina's residential local exchange markets today.⁹ But, as the Commission recognized in its SBC-Oklahoma Order,¹⁰ the current absence of a qualifying Track A new entrant does not necessarily absolve an RBOC from Track A compliance. The Commission recognized in the SBC-Oklahoma Order that it must make a predictive judgment about the likelihood of facilities-based residential and business competition in the foreseeable future (Order at ¶¶ 27-30).

ALTS submitted a public and a confidential affidavit from DeltaCom ITC with its initial comments discussing DeltaCom's

⁹ The absence of any BellSouth line losses to competitors in South Carolina is highly ironic given BellSouth's repeated emphasis on such losses in its public statements (see, e.g., BellSouth's press release dated November 5, 1997, entitled "BellSouth Asks Congress to Aggressively Oversee Implementation of 1996 Telecom Act"). In any event, the 215,000 lines BellSouth claims to have lost to competitors, assuming the figure is correct, is less than 1% of its more than 22 million lines (see BellSouth's Second Quarter Highlights).

¹⁰ In the Matter of Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121, Order released June 26, 1997.

business plans for the provision of service in South Carolina. A supplemental affidavit is being submitted with these reply comments to clarify that, while DeltaCom intends to provide facilities-based competitive local exchange service in South Carolina, it is a separate entity, with whom DeltaCom has a business relationship, that will actually provide facilities-based local exchange residential service in South Carolina. These plans were summarized in the confidential affidavit initially submitted with ALTS initial comments, and amplified in the supplemental public and confidential information being submitted today.

The affidavits establish that both residential and business facilities-based competitive services are being planned for South Carolina. The affidavits also establish that DeltaCom and the provider of planned residential services have taken reasonable steps to provide such services. Thus, the circumstances that would disable Track A do not exist in South Carolina, and BellSouth may not proceed pursuant to Track B.

Track A is clearly the Congressionally-preferred method for RBOC entry into the in-region interLATA market. The Commission should be particularly careful not to jump to the self-fulfilling conclusion that CLECs do not intend to offer facilities-based residential service simply because current efforts have moved

more slowly than policy makers would prefer.¹¹ Just as DOJ cautions with regard to OSS compliance, if BellSouth were free to enter long distance through Track B in South Carolina, it would have little or no incentive to implement interconnection arrangements with facilities-based providers.

Complaints about competitive progress in residential markets are particularly unfounded, given the RBOCs' poor efforts in the pricing and provisioning of two elements essential to such service -- unbundled loops and collocation.¹² The Telecommunications Act of 1996 was passed only two years ago, so it is far too early at the present time to abandon hope of facilities-based residential competition and to lift what little incentive the RBOCs now have to make facilities-based competition a reality.

¹¹ As the South Carolina Consumer advocate noted: "[w]hile . . . local competition is not progressing as fast as it should, this is not a reasonable or permissible basis for the Commission to grant BellSouth's request in this case." CASSC Comments at 3.

¹² See Affidavit of Steven D. Moses attached to ALTS original Comments in this proceeding; Comments of ACSI.

CONCLUSION

For the foregoing reasons, ALTS requests that BellSouth's Application for In-Region InterLATA authority in South Carolina be denied.

Respectfully submitted,

By: Richard J. Metzger
Richard J. Metzger
Emily M. Williams
Association for Local
Telecommunications Services
888 17th Street, N.W.
Washington, D.C. 20006
(202) 466-3046

November 14, 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
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Application by BellSouth Corporation)
BellSouth Telecommunications, Inc.,) CC Docket No. 97-208
And BellSouth Long Distance, Inc., for)
Provision of In-Region, InterLATA)
Services in South Carolina)

AFFIDAVIT OF STEVEN D. MOSES
ON BEHALF OF ITC DELTACOM, INC.

I. Background

1. DeltaCom, Inc. has been an interexchange carrier and a carrier's carrier for some time. It has an equal number of business and residential customers, with business generating most of the revenues. Its services were limited, primarily, to Alabama, until it was acquired by ITC Holding Company last year. After that, it began to expand its presence in the other BellSouth states. DeltaCom's recent public debt and equity offerings will allow DeltaCom to provide telephone services of all types to the BellSouth states.

2. Currently, DeltaCom has three switches, one in Arab, Alabama (that is toll only), one in Birmingham, Alabama (a DMS 500 for local and toll) and one in Columbia, South Carolina (a DMS 500 for local and toll installed in July 1997).

II. BellSouth non-compliance with the Act

3. As of the time of this filing, LENS has continued to be unreliable for pre-ordering and ordering functions due to the following: (1) DeltaCom representatives have had difficulty entering and staying signed into the application; (2) DeltaCom representatives continue to experience systems "lock ups" such that DeltaCom has to re-enter the application and the information; and (3) a Firm Order Confirmation ("FOC") is not returned with the order. In addition to the problems noted above, DeltaCom representatives were unable to access customer record information or place orders on the following dates: November 3rd, 4th, and 5th.

4. Not surprisingly, DeltaCom representatives have discovered that the turn around time when submitting orders via facsimile has been much shorter as compared to placing the orders via LENS. Meanwhile, DeltaCom has received EDI-PC software and is in its first phase of EDI implementation. Again, DeltaCom learned at the Alabama Public Service Commission hearing in August, 1997, that BellSouth would rely on EDI in its application for interLATA authority, although LENS had been presented by BellSouth to DeltaCom as both a pre-ordering and ordering application.

III. DeltaCom's efforts to serve local exchange customers and business plans to provide facilities-based services in South Carolina

5. As demonstrated in the DeltaCom Confidential Exhibit ("DCE") heretofore filed on October 20, 1997, residential facilities based services will be available in South Carolina in the foreseeable future. The DCE exhibit, as amended and attached hereto, outlines DeltaCom's business plans in South Carolina.

6. To provide clarification and to insure consistency with the amended DCE, page ten (10) paragraph twenty-two (22) of the initial affidavit filed on October 20, 1997, is revised, in its entirety, to state as follows:

"22. As demonstrated in the DCE, as amended, DeltaCom has been financially committed to provide local exchange services throughout the State of South Carolina, and has been engaged in reasonable efforts to do so for some time. These services will, as soon as feasible, be facilities based although DeltaCom has no plans to construct the local loop opting instead to acquire the local loop, as an unbundled element, either from BellSouth or one of its competitors."

Similarly, the last sentence of page eleven (11) paragraph twenty-three (23) is revised to state as follows:

"23. ...And, the attached DCE indicates that Track B is equally unavailable, because facilities-based residential service will be provided in the near future."

7. Currently, DeltaCom provides access and private line services over its own network throughout South Carolina. DeltaCom has eight residential resale customers whose orders have not yet been completed. It has a few Columbia, South Carolina resale local business test customers, who won't be billed customers until year end, when BellSouth can activate the DeltaCom NXXs. DeltaCom ordered NXXs between April and July, 1997. DeltaCom has reserved 40 NXXs in South Carolina, of which 50% are now active. DeltaCom is almost ready to provide local service in Columbia with ISDN trunks, subject to physical

ATTACHMENT

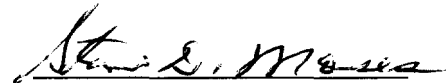
collocation which is 150 days away for the reasons explained in the affidavit filed on October 20, 1997. Columbia local service is therefore projected to be available in 210 days. DeltaCom has been requesting this collocation since April 1997. Greenville collocation was requested by DeltaCom on September 29, 1997, with BellSouth having (60) days to consider it, and 5-11 months thereafter to implement it, with there being a sixty day deployment lag thereafter. Service should be available in Greenville in approximately 260 days. DeltaCom ordered 288 interconnection trunks and eight (8) 911 trunks between July and August from BellSouth.

IV. Conclusion

In summary, BellSouth has not met the requirement of providing nondiscriminatory access to its Operational Support Systems ("OSS"). DeltaCom cannot rely on LENS for pre-ordering or ordering as the application frequently "locks up" or "times out", and as yet, BellSouth has not been able to resolve this problem.

The amended DCE indicates that Track B is unavailable to BellSouth because a separate entity, with whom DeltaCom has a business relationship, will provide facilities based residential services in the near future.

The information contained in this affidavit and in the attached Exhibit is true and correct to the best of my knowledge and belief.



Steven D. Moses
Senior Vice President
Of Network Services
ITC^DELTACOM, INC.

Subscribed and sworn to before me this 13th
Day of November, 1997.


NOTARY PUBLIC

My commission expires:

MY COMMISSION EXPIRES MARCH 8, 2001.